

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Revision to Public Inspection File)	MB Docket No. 16-161
Requirements - Broadcaster Correspondence)	
File and Cable Principal Headend Location)	

COMMENTS OF THE NATIONAL HISPANIC MEDIA COALITION

The National Hispanic Media Coalition (“NHMC”)¹ respectfully submits these comments to oppose the Federal Communication Commission’s (“FCC” or “Commission”) tentative conclusion in the Notice of Proposed Rulemaking (“NPRM”) to eliminate the requirement that commercial broadcasters retain public letters and emails in a public inspection file.² Elimination of this requirement would be contrary to the public interest because, as the Commission has observed, “viewers and listeners are an important source of information about the nature of their area stations’ programming, operations, and compliance with their FCC obligations.”³ The Commission’s rationale for eliminating this requirement does not outweigh the benefits this vital resource provides to the American people.

I. THE PURPOSE OF THE CORRESPONDENCE FOLDER IN THE PUBLIC FILE REMAINS INCREDIBLY IMPORTANT

The public file empowers regular community members to hold their local broadcasters accountable to serving the public interest in their communities of license, and the correspondence folder is an integral portion of the file. The stated purpose of the correspondence folder – helping

¹ NHMC is a non-profit media advocacy and civil rights organization.

² *Revisions to the Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location*, MB Docket No. 16-161, Notice of Proposed Rulemaking, FCC 16-62 at 5, para. 9 (rel. May 25, 2016) (“*Public Inspection File NPRM*”).

³ FCC, *The Public and Broadcasting: How to Get the Most Service from Your Local Station* at 26 (rev. July 2008), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-08-940A2.pdf (“Public and Broadcasting”).

members of the public “better determine the nature of community feedback being received by the licensees and the extent to which his or her opinions regarding community problems and needs and/or the licensee’s station operation might be shared by other members of the community” – remains incredibly important.⁴ Today over 90 percent of Americans still tune into broadcast television and/or radio on a weekly basis.⁵ The fact remains that broadcasters profit from use of the public airwaves, and, in exchange, have a “public interest obligation to air programming that is responsive to the needs and interests of their community of license.”⁶

The correspondence folder is often the most informative folder in a station’s entire public file. Other folders contain technical information and legal language that is not necessarily approachable for local community members. It is in the correspondence folder where the public can see letters in plain language addressing local community concerns. Indeed, NHMC has used correspondence found in the public file to inform grassroots campaigns to hold broadcasters accountable for hate speech over the public airwaves.⁷ By eliminating correspondence from the public file, the Commission would not only impinge on the dialogue between broadcasters and the public, but it would also prevent certain members of the community from determining if other people in their DMA share their concerns.⁸

⁴ *Public Inspection File NPRM* at 2, para. 3 (citing *Formulation of Rules and Policies Relating to the Renewal of Broadcast Licenses*, Final Report and Order, 43 FCC 2d at 17, para. 51 (“1973 Final Report and Order”), *recon. granted in part on other grounds*, 44 FCC 2d 405 (1973) at 415, para. 35 (“1973 Memorandum Opinion and Order”)).

⁵ See Amy Mitchell & Jesse Holcomb, *State of the News Media 2016*, Pew Research Center (June 15, 2016), available at <http://www.journalism.org/files/2016/06/State-of-the-News-Media-Report-2016-FINAL.pdf>.

⁶ *Public Inspection File NPRM* at 5, para. 9.

⁷ See, e.g., “José Luis Sin Censura” Hit With Historic FCC Fine As Result of NHMC, GLAAD Complaint (Nov. 18, 2013), available at <http://www.nhmc.org/jose-luis-sin-censura-hit-with-historic-fcc-fine-as-result-of-nhmc-glaad-complaint/>; NHMC Applauds KFI AM for Suspending Hate Mongers John and Ken, (Feb. 16, 2012), available at <http://nhmc.org/sites/default/files/Applauds%20KFI%20AM%20for%20Suspending%20Hate%20Mongers%20John%20and%20Ken.pdf>.

⁸ See *Public and Broadcasting*, *supra* note 3. The Commission states that it “encourage[s] a continuing dialogue between broadcasters and members of the public to ensure that stations meet their obligations and remain responsive to the needs of the local community ... you can be a valuable and effective advocate to ensure that your area’s stations comply with their localism obligation and other FCC requirements.” *Id.* at 26.

II. THE COMMISSION’S REASONS FOR ELIMINATING THE CORRESPONDENCE FOLDER ARE NOT SUPPORTED BY EVIDENCE

The Commission’s reasons for eliminating the correspondence folder are not supported by the evidence and, even if they were, the benefits of maintaining the rule outweigh the purported burdens. The Commission states that correspondence in the public file should be eliminated because it is: (1) no longer used by the public and unnecessary due to the power of social media;⁹ (2) redundant because the public can still file complaints with the Commission or their local broadcaster, especially during license renewals;¹⁰ and (3) burdensome to maintain locally and prevents commercial broadcasters from transitioning their public files to online databases.¹¹ These assertions lack supporting data and wrongly assume that all Americans have access to the internet and are comfortable participating in social media.

First, consumers continue to utilize public file correspondence folders, and the Commission cites no evidence to support its tentative conclusion to the contrary. NHMC, and the Commission itself, have conducted considerable outreach to educate the public that the file, including the correspondence folder, is available for inspection. NHMC regularly receives calls and emails from consumers across the country expressing grievances about their local broadcasters, and, in response, NHMC provides them with a fact sheet about the public file, and directs those individuals to send a letter to the station and visit the public file to learn more about

⁹ See Statement of Chairman Thomas E. Wheeler, *Public Inspection File NPRM* at 17, (stating “like most of us, consumers interact with their favorite stations via social media”); see also, Statement of Commissioner Mignon L. Clyburn, *Public Inspection File NPRM* at 18 (observing “a social media post on a broadcaster’s page can be far more impactful than a letter or an e-mail sent directly to a television or radio station’s office.”); see also, Statement of Commissioner Michael P. O’Reilly, *Public Inspection File NPRM* at 21 (stating that “given the very few requests for onsite inspection of broadcasters’ correspondence files...these rules look outdated and unnecessary.”).

¹⁰ *Public Inspection File NPRM* at 5, para. 9.

¹¹ *Id.* (stating “eliminating [this] public inspection file requirements would reduce the burden on commercial broadcasters.”).

other consumer complaints to the station. In addition, NHMC staff, board members and constituents continue to visit broadcast stations to inspect correspondence folders.

The Commission wrongly suggests that social media is a viable alternative to engage with broadcasters and negates the need for correspondence to be housed at the station.¹² This assumes that only folks with internet access have grievances about their broadcast stations when, in fact, the opposite is true. The Commission well knows that nearly one-third of Americans do not have home broadband.¹³ Indeed, some of the very demographic groups that rely disproportionately on over-the-air broadcast, the poor and Latinos,¹⁴ are also more likely to be without a broadband connection.¹⁵ Although the web could be a powerful tool *in addition to* the correspondence folder at the station, viewers without internet access or who lack the digital literacy skills to utilize social media would be left without a way to include their comments in a public record.¹⁶ Nor would those individuals be able to view the online comments of others. Only 46 percent of Latino adults currently use home broadband, significantly limiting this specific community's access to digital content.¹⁷ For such audiences, letter-writing remains the most accessible means to insert their concerns into a public record. Continuing to collect and

¹² See *infra* note 8.

¹³ See John B. Horrigan & Maeve Duggan, Home Broadband 2015, Pew Research Center 2 (Dec. 21, 2015), available at <http://www.pewinternet.org/files/2015/12/Broadband-adoption-full.pdf>.

¹⁴ See National Association of Broadcasters, Broadcast Television and Radio in Hispanic Communities (Feb. 2016), available at http://www.nab.org/mpres/BroadcastTVandRadio-HispanicCommunities_NAB.pdf; see also One-Quarter of US Households Live Without Cable, Satellite TV Reception – New GfK Study (July 13, 2016), available at <http://www.gfk.com/en-us/insights/press-release/one-quarter-of-us-households-live-without-cable-satellite-tv-reception-new-gfk-study/>.

¹⁵ See *infra* note 12.

¹⁶ Complaints filed with the FCC against a licensee are not searchable on the FCC's website. One must file a Freedom of Information Act (FOIA) request to obtain copies of complaints. FOIA requests cost money and add an unnecessary layer of bureaucracy for average Americans who want merely to learn about grievances against their local broadcasters.

¹⁷ See Anna Brown, Gustavo López & Mark Hugo Lopez, Digital Divide Narrows for Latinos as More Spanish Speakers and Immigrants Go Online, Pew Research Center 5 (July 20, 2016), available at http://www.pewhispanic.org/files/2016/07/PH_2016.07.21_Broadbank_Final.pdf.

make publicly available letters and emails does not, of course, preclude a broadcaster from also engaging with viewers via social media

Second, the FCC broadcast license renewal process is not a realistic mechanism for average Americans to interact with their local broadcast stations, and certainly it should not justify terminating broadcasters' obligation to retain and make available letters and emails from viewers and listeners. Broadcast license renewals come up only every eight years. The process is obscure and inaccessible. It is unreasonable to ask members of the public to wait for a license renewal to air their grievances when it is more likely that they will address complaints directly to local broadcasters. No other entity is better equipped to hold a broadcaster accountable for local coverage than listeners and viewers embedded in a community.

Third, the Commission and the broadcasters have not provided any reason or detail about why and how maintaining the correspondence folder is burdensome to broadcasters. There is no data, or even an estimate, of the amount of time that broadcasters spend per week to maintain the folder. As the NPRM notes, today most correspondence between broadcast stations and the communities they serve happens over social media and the number of emails and letters to stations has decreased.¹⁸ This stands in stark contrast to the 60,000 letters per year that broadcasters reportedly used to receive and manage without incident.¹⁹ In addition, broadcasters and the FCC fail to articulate why and how maintaining a small correspondence folder at the station would prevent broadcasters from moving the rest of their public files online.

NHMC recently inspected WMAL DC's public file, and found that the station had received five emails over the course of the past three months. There is no data to determine

¹⁸ See *infra* note 8.

¹⁹ See *1973 Final Report and Order* at 10, para. 45 ("Metromedia contends that any major market station could reasonably expect 60,000 letters a year.").

whether this is an average amount of correspondence, but assuming that it is, it is hard to imagine that these five items amounted to any more than one total hour of work over the course of three months, which would mean that the station would have spent roughly twenty minutes per month, or five minutes per week, maintaining the folder.

CONCLUSION

For these reasons, NHMC respectfully requests that the Commission preserve the requirement that broadcasters maintain and allow access to a correspondence folder at their stations. This vital resource continues to serve the public interest, enabling the public to hold their local broadcasters accountable.

Respectfully Submitted,

/s/

Andy Lomeli
Carmen Scurato
Jessica J. González, Esq.
National Hispanic Media Coalition
55 South Grand Avenue
Pasadena, CA 91105
(626) 792-6462

July 22, 2016